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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - x  
In re: : Chapter 11  
:   
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :   
:   
Debtors. : Jointly Administered  
- - - - - x

**DEBTORS' OBJECTION TO MOTION TO ALLOW THE PROOF  
OF CLAIM OF ASHLEY ISAAC AS TIMELY FILED**

The debtors and debtors-in-possession in the above-captioned jointly administered cases (collectively, the "Debtors")<sup>1</sup> hereby file this objection (the "Objection") to

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia,

the Motion to Allow the Proof of Claim of Ashley Isaac as Timely Filed (Docket No. 5873) (the "Late Claim Motion") filed by Ashley Isaac ("Movant"). In support of the Objection, the Debtors respectfully represent as follows:

#### **BACKGROUND**

##### **A. The Bankruptcy Cases**

1. On November 10, 2008 (the "Petition Date"), the Debtors filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court"), their voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the "Bankruptcy Code") commencing the above-captioned chapter 11 cases.

2. The Debtors have continued the management of Debtors' business and properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia

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Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), Prahs, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courcheval, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

**B. The Bar Date for Filing General Unsecured Claims.**

**(1) General bar date.**

4. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as claims, noticing and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

5. On December 10, 2009, the Court entered that certain Order Pursuant to Bankruptcy Code Sections 105 and 502 and Bankruptcy Rules 2002, 3003(c)(3), and 9007 (I) Setting General Bar Date and Procedures for Filing Proofs of Claim; and (II) Approving Form and Manner of Notice Thereof (Docket No. 890) (the "Claims Bar Date Order").

6. Pursuant to the Claims Bar Date Order, the deadline for filing all "claims" (as defined in 11 U.S.C. § 105(5)) arising before November 10, 2008 against the Debtors by any non-governmental entity was 5:00 p.m. (Pacific) on January 30, 2009 (the "General Bar Date"). The deadline for governmental units to file claims that arose before November 10, 2009 was 5:00 p.m. (Pacific) on May 11, 2009 (the "Governmental Bar Date"). Pursuant to the Claims Bar Date

Order, this Court approved the form and manner of the claims bar date notice, which was attached as Exhibit A to the Claims Bar Date Order (the "Claims Bar Date Notice").

**(2) Service of Claims Bar Date Notice.**

7. On December 17 and 19, 2008, KCC served a copy of the Claims Bar Date Notice on all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all of the Debtors' scheduled creditors in these cases, the Debtors' equity holders, and certain other parties (Docket No. 1314).

8. In addition, the Debtors published the Claims Bar Date Notice in The Wall Street Journal (Docket No. 1395) and The Richmond Times-Dispatch (Docket No. 1394).

9. Claimant was served with the Claims Bar Date Notice, a proof of claim form, and the Notice of Commencement and Deadlines due to her status as an employee. See Affidavit of Service, p. 2294, attached hereto as Exhibit A.

**C. Contents of the Claims Bar Date Order and Notice**

10. The Claims Bar Date Order provides in relevant part:

Pursuant to Bankruptcy Rule 3003(c)(3), all "entities" and "persons" (as defined respectively in 11 U.S.C. § 101(15) and (41)), except any governmental unit (as defined in 11 U.S.C. § 101(27)) that are creditors holding or wishing to assert "claims" (as defined in 11 U.S.C. § 101(5)) arising before the Petition Date against any of the Debtors are required to file with the Debtors' Claims Agent (as defined below), on or before 5:00 p.m. (Pacific) on January 30, 2009 (the "General Bar Date") a separate, completed, and executed proof of claim form (conforming substantially to Official Bankruptcy Form No. 10) on account of any such claims in accordance with the procedures set forth below.

. . .

Pursuant to Bankruptcy Rule 3003(c) and Bankruptcy Code section 502(b)(9), any governmental units (as defined in 11 U.S.C. § 101(27)) that are creditors holding or wishing to assert "claims" (as defined in 11 U.S.C. § 101(5)) arising before the Petition Date against any of the Debtors are required to file, on or before 5:00 p.m. (Pacific) on May 11, 2009 (the "Governmental Bar Date") a separate, completed, and executed proof of claim form (conforming substantially to Official Bankruptcy Form No. 10) on account of any such claims in accordance with the procedures set forth below.

. . .

Any creditor that is required to file but fails to file a proof of claim for its claim in accordance with the procedures set forth in this order on or before the General Bar Date, the Governmental Bar Date, or such other date established hereby (as applicable) shall be forever barred, estopped, and enjoined from: (a) asserting any Claim against the Debtors that (i) is in an amount that exceeds the amount, if any, that is set forth in the Schedules as undisputed, noncontingent, and unliquidated or (ii) is of a different nature or in a different classification (any such claim referred to as an "Unscheduled Claim") and (b) voting upon, or receiving distributions under, any plan or plans of reorganization in these chapter 11 cases in respect of an Unscheduled Claim; and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to such Unscheduled Claim.

Bar Date Order, ¶¶ 2, 3, 12

11. The Claims Bar Date Notice provides in relevant part:

**CONSEQUENCES OF FAILURE TO FILE PROOF OF CLAIM**

Any creditor that is required to file but fails to file a proof of claim for its Claim in accordance with the procedures set forth herein on or before the General Bar Date, the Governmental Bar Date, or such other date established hereby (as applicable) shall be forever barred, estopped, and enjoined from: (a) asserting any Claim against the Debtors that (i) is in an amount that exceeds the amount, if any, that is set forth in the Schedules as undisputed, noncontingent, and unliquidated or (ii) is of a different nature or in a different classification (any such claim referred to as an "Unscheduled Claim") and (b) voting upon, or receiving distributions under, any plan or plans of reorganization in these chapter 11 cases in respect of an Unscheduled Claim; and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to such Unscheduled Claim. If it is unclear from the Schedules and Statements whether your Claim is disputed, contingent or unliquidated as to amount or is otherwise properly listed and classified, you must file a proof of claim on or before the General Bar Date. Any Entity that relies on the Schedules and Statements bears responsibility for determining that its Claim is accurately listed therein.

Bar Date Notice, p. 5.

**D. The Late Claim Motion.**

12. By the Late Claim Motion, which was filed ten (10) months after the General Bar Date, Movant seeks an extension of the deadline by which she must file a proof of claim, such that her late-filed proof of claim will not be barred as late. Movant asserts that her claim was filed late because she did not receive notice of the General Bar Date.

Late Claim Motion, ¶ 8.

**(1) Claimant's Claim.**

13. On May 13, 2009, and in violation of the automatic stay, Movant filed a complaint against, among others, the Debtors in the United States District Court for the Northern District of Alabama, Northern Division (the "District Court Litigation").

14. On July 20, 2009, the United States District Court for the Northern District of Alabama sua sponte dismissed the District Court Litigation as to the Debtors on account of the Debtors' bankruptcy proceedings. On August 14, 2009, the District Court dismissed the District Court Litigation against the remaining defendant.

15. On July 28, 2009 - six (6) months after the General Bar Date - the Movant filed a late proof of claim asserting a general unsecured claim in the amount of

\$850,000.00 against the Debtors ("Claim No. 14526"), based on the District Court Litigation (which is no longer pending). A copy of Claim No. 14526 is attached hereto as Exhibit B. On November 20, 2009, the Debtors filed their Sixtieth Omnibus Objection to Claims (Disallowance of Certain (I) No Liability (Legal Claims); (II) No Liability (Miscellaneous Claims); and (III) No Liability (Subcontractor Claims)), which objected to, among other claims, Claim No. 14526 (Docket No. 5879)(the "Sixtieth Omnibus Objection"). On December 11, 2009, Movant filed her response to the Sixtieth Omnibus Objection (Docket No. 6064)(the "Sixtieth Omnibus Responses").<sup>2</sup>

#### **OBJECTION**

##### **I. Movant's Claim is Barred by the Terms of the Bar Date Order and Movant's Late Claim Motion Should be Denied**

16. Movant did not file a claim by the General Bar Date and, as a result, her claim is time barred and permanently enjoined under the terms of the Bar Date Order.

17. The claims bar date in a chapter 11 bankruptcy case serves a very important purpose; "[t]he requirement of a Bar Date in Chapter 11 enables the debtor...to establish

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<sup>2</sup> The hearing on the Sixtieth Omnibus Objection has been adjourned generally, and is currently scheduled for a status hearing on April 15, 2010. If this Court denies the Motion, however, it will moot the Sixtieth Omnibus Objection with respect to the Movant and the Sixtieth Omnibus Response because the effect will be to disallow Claim No. 14526.

the universe of claims with which it must deal and the amount of those claims." In re A.H. Robins Co., Inc., 129 B.R. 457, 459 (Bankr. E.D. Va. 1991); see also In re Circuit City Stores, Inc., Case No. 08-35653, Feb. 4, 2010, Docket No. 6465, p. 8.. Premised on the imperative purpose of finality of asserting claims against a debtor in chapter 11, courts have not allowed claims filed by creditors after the bar date, absent special circumstances. See In re Provident Hosp., Inc., 122 B.R. 683, 685 (D. Md. 1990), aff'd, 943 F.2d 49 (4th Cir. 1991) (unpublished opinion) ("Because [the claimant] did not timely file his bankruptcy claim after having been given constitutionally sufficient notice, his claim is barred under well-settled authority, 11 U.S.C. 1141(d) and Bankruptcy Rule 3003(c)(2).").

18. Despite actual and constructive notice, Movant failed to file a claim by the General Bar Date. As a result of Movant's failure to timely file a proof of claim by or before the General Bar Date, Movant is "forever barred, estopped and permanently enjoined from . . . asserting any Claim against the Debtors . . ." Claims Bar Date Order, p. 12.

**II. Movant Has Failed To Satisfy The Pioneer Standard For Excusable Neglect And Her Late Claim Motion Should Be Denied.**

19. Due process requires that the notice of the applicable bar date be "reasonably calculated, under the circumstances, to apprise an interested party of the pendency of the action." In re Snug Enters., Inc., 169 B.R. 31, 33 (Bankr. E.D. Va. 1994). As set forth above, Claimant received actual and constructive notice of the General Bar Date and sufficient notice was given to Claimant such that her due process rights were met.

20. Bankruptcy Rule 9006(b)(1) provides that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may . . . on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1).

21. The Late Claim Motion raises factual and legal issues that must be analyzed under the standard articulated by the Supreme Court in Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'Ship.

22. The Supreme Court, in Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'Ship, established the standard for determining whether a party's failure to file a proof of claim by the bar date was the result of "excusable neglect" such that the bankruptcy court may allow the party to file a late proof of claim. Pioneer, 507 U.S. 380, 389 (1993); see also In re Wilmoth, 2009 WL 902105 (Bankr. E.D. Va. March 5, 2009) (Huennekens, J.) (applying Pioneer standard of excusable neglect).

23. "'Excusable neglect' is not easily demonstrated, nor was it intended to be." Thompson v. E.I. DuPont de Nemours & Co., 76 F.3d 530, 534 (4th Cir. 1996); see also In re Circuit City Stores, Inc., Case No. 08-35653, Feb. 4, 2010, Docket No. 6465, p. 10. To determine whether neglect is excusable, a court should evaluate all relevant circumstances surrounding the party's failure to timely file. Pioneer, 507 U.S. at 395; see also Huennekens v. Marx (In re Springfield Contracting Corp.), 156 B.R. 761, 766 (Bankr. E.D. Va. 1993). These circumstances include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant

acted in good faith." Id. The inquiry is necessarily factual intensive, involving an examination of the facts and circumstances surrounding a creditor's failure to timely file a proof of claim. In re Cendant Corp. Prides Litigation, 233 F.3d 188, 196 (3d Cir. 2000) (finding that the court must consider the totality of the circumstances in determining whether there is excusable neglect); In re XO Communications, Inc., 301 B.R. 782, 796 (Bankr. S.D.N.Y. 2003) (citations omitted) ("[C]ourts are to look for a synergy of several factors . . ." in evaluating excusable neglect).

24. The burden of proving excusable neglect lies with the claimant seeking to file a proof of claim after a court-ordered bar date. In re Enron Corp., 419 F.3d 115 (2d Cir. 2005); see also Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530, 534 (4th Cir. 1996) ("'[T]he burden of demonstrating excusability lies with the party seeking the extension...'"') (quoting In re O.P.M. Leasing Serv., Inc., 769 F.2d 911, 917 (2d. Cir. 1985)).

25. As one court in this district previously noted: "[i]f the court were to allow [Claimant] to file a late claim solely because [Claimant was] unaware of the bankruptcy filing, it is difficult to see on what basis the

court could deny the same relief to dozens or perhaps hundreds of creditors who might now come forward." In re US Airways, Inc., 2005 Bankr. LEXIS 2696, \*24-25 (E.D. Va. 2005); In re US Airways, Inc., 2005 Bankr. WL 3676186, \*8 (E.D. Va. 2005) ("[A]llowance of claims filed many months after the passage of the bar date would frustrate the efforts of both the participants and the court.")

26. At this time, Movant has failed to satisfy her burden of alleging facts sufficient to satisfy the Pioneer standard, and the Late Claim Motion should be denied.

**A. Movant's Failure to Timely File a Claim Was Not the Result of "Neglect"**

27. "The law since the Pioneer decision has been well established that where a party's actions are deliberate, the party's late filing cannot constitute excusable neglect." In re Banco Latino International, 310 B.R. 780, 785 (Bankr. S.D. Fla. 2004) (internal quotations omitted); see also In re Celotex Corp., 232 B.R. 493, 495 (Bankr. M.D. Fla. 1999) ("After Pioneer, most courts have held that where a party's actions are deliberate, the party's late filing cannot constitute excusable neglect."); see also Agribank v. Breen, 188 B.R. 982, 989 (Bankr. C.D. Ill. 1995) ("[The Pioneer Court's] definition [of 'neglect'] virtually excludes any

possibility that a late filing which is the result of a party's deliberate choice can constitute 'neglect.'").

28. Movant was served with the Claims Bar Date Notice in December 2009. See Exhibit A; see also Southern Motors, Inc. v. Virginia National Bank, 73 B.R. 261, 265 (W.D. Va. 1988) ("Proof that mail was properly addressed, stamped, and deposited with the Postal Service has long been accepted as evidence of delivery to the addressee."). As a result, Movant had adequate time to prepare and file her claim before the expiration of the General Bar Date.

29. Movant's failure to file a claim appears to be the result of deliberate inaction, rather than "neglect." Because Movant had knowledge of the General Bar Date, Movant's conduct must be characterized as "deliberate." See Pioneer Inv. Servs. Co., 507 U.S. at 388 (stating that neglect "encompasses both simple, faultless omissions to act and, more commonly, omissions caused by carelessness"). Movant's failure to timely file her claim was not the result of neglect. Accordingly, Movant should not be allowed to file a late claim.

**B. Alternatively, Movant's Neglect Was Not Excusable**

30. If a claimant is able to overcome the burden of proving that its failure to timely file a claim was the

result of neglect, a court must then turn to the secondary inquiry of whether or not such neglect is "excusable." See id. at 395; see also In re Circuit City Stores, Inc., Case No. 08-35653, Feb. 4, 2010, Docket No. 6465, p. 10. In Pioneer, the Court held that the determination of whether the claimant's neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Id. In keeping with the equitable nature of such a determination, the Supreme Court set forth four (4) factors to be considered when contemplating a motion to allow a late-filed proof of claim under Rule 9006(b). Those factors include: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the claimant; and (4) whether the claimant acted in good faith. Pioneer, 507 U.S. at 395. Furthermore, this Court has adopted this standard. In re Circuit City Stores, Inc., Case No. 08-35653, Feb. 4, 2010, Docket No. 6465, p. 10.

31. In Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530 (4th Cir. 1996), a unanimous panel of the U.S. Court of Appeals held that the "excusable neglect"

standard was not an easy one to satisfy: "'excusable neglect' is not easily demonstrated, nor was it intended to be." Id. at 534; see also In re Best Products Co., 140 B.R. 353, 359 (S.D.N.Y. 1992) (characterizing the bar date as a court-imposed statute of limitation that is "peremptory"). Inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute "excusable neglect."

See Thompson, 76 F.3d at 534; see also In re Best Products Co., Inc., 140 B.R. at 358 ("Except when a known creditor is not listed on the schedules and hence fails to receive notice of the filing deadline, the bar date is strictly enforced.") (citing Wright v. Placid Oil Co., 107 B.R. 104, 106 (N.D. Tex. 1989)). "Even upon a showing of 'excusable neglect,' whether to grant an enlargement of time still remains committed to the discretion of the district court." Thompson, 76 F.3d at 532.

**1. Movant Has Failed to Provide an Adequate Reason for Failing to Timely File**

32. "The most important of the factors identified in Pioneer for determining whether 'neglect' is 'excusable' is the reason for the failure to file." Thompson, 76 F.3d at 534. "[T]he four Pioneer factors do not carry equal weight; the excuse given for the late filing must have the greatest

import. While prejudice, length of delay, and good faith might have more relevance in a close[] [sic] case, the reason-for-delay factor will always be critical to the inquiry." In re Enron Corp., 419 F.3d 115, 122-24 (3d Cir. 2005) (quoting Graphic Commc'ns. Int'l Union v. Quebecor Printing Providence, Inc., 270 F.3d 1, 5-6 (1st Cir. 2001)); see also Pioneer Inv. Servs. Co. v. Brunswick Ass'n Ltd. P'ship, 507 U.S. at 395 (stating that it is also significant whether or not the reason for the failure to file was "within the reasonable control of the movant."). In this case, Movant offers no plausible reason for her failure to file a proof of claim until nearly six (6) months after the General Bar Date.

33. The Supreme Court noted in Pioneer that "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable neglect.'" 507 U.S. at 392.

**2. Debtors Will Be Prejudiced if Movant's Claim Is Allowed**

34. Another factor to be considered when determining whether a party's failure to act in a timely manner was attributable to "excusable neglect" is whether the party's failure to act in a timely manner will prejudice the

opposing party. See Pioneer, 507 U.S. at 395. However, the presence or absence of prejudice to the Debtors is only one of several factors to be considered by the court in determining whether the claimant has satisfied the excusable neglect standard. See In re Keene Corp., 188 B.R. 903, 909 (S.D.N.Y. 1995) ("We ... conclude that an approach that considers all the relevant factors, but recognizes that they all need not point in the same direction, is the correct one. Conversely, we question the wisdom of an approach under which the court must ultimately ignore the creditor's culpability and permit the filing of an [sic] late claim if prejudice is absent.").

35. The allowance of Movant's late claim could conceivably have a negative impact on the dividend to other creditors. The allowance of this late claim would diminish the distribution projected for those claimants that filed timely proofs of claim. See In re Intelligent Med. Imaging, 262 B.R. 142, 146 (Bankr. S.D. Fla. 2001) (disallowing the late claim in a liquidating chapter 11 case because "the claim would produce substantial prejudice to the other creditors in the case, in that it would greatly reduce the distribution to unsecured creditors."). In addition, if this Court were to grant Movant's Late Claim Motion, it may

encourage the filing of many similar motions, and the amount of the Court's time that would be devoted to considering late claim motions in this case would be substantial.

36. Were this Court to grant the relief requested by the Movant, it also would wreak administrative havoc in the Debtors' claims resolution process, which could have a substantial impact on distributions to other creditors, as well as affect the liquidation analysis and claims pool with respect to confirmation of the plan of liquidation. The amount of time and legal expense that the Debtors would have to devote to responding to such motions, rather than continuing to reconcile timely filed claims, also could be substantial. See In re Calpine Corp., 2007 U.S. Dist. LEXIS 86514 at \*19 (S.D.N.Y. Nov. 21, 2007) (finding that "the disruption in the judicial administration of the estate can constitute prejudice, apart from any decreased distribution"); see also In re Nat'l Steel Corp., 316 B.R. 510, 520 (Bankr. N.D. Ill. 2004) (disallowing a late claim because allowing the claim would require considerable analysis and time and would severely prejudice the debtors and their ability to effectively and efficiently review and dispose of claims and make distributions under the plan). The allowance of late claims at this stage of the case also

would severely prejudice the administration of this mature liquidating chapter 11 case.

37. Allowing Movant's late claim could easily open the flood gates for additional late claimants to come forward. As one court in this district has previously noted: "[i]f the court were to allow [Movant] to file a late claim solely because [Movant was] unaware of the bankruptcy filing, it is difficult to see on what basis the court could deny the same relief to dozens or perhaps hundreds of creditors who might now come forward." In re US Airways, Inc., 2005 Bankr. LEXIS 2696, \*24-25 (E.D. Va. 2005); see also In re Dana Corp., 2007 Bankr. LEXIS 1394 at \*19 (In a case dealing with a late-filed 503(b)(9) claim in a chapter 11 bankruptcy, the court held that "the floodgates argument is a viable one ... [g]ranting the requested relief ... would set an untenable precedent and would likely precipitate a flood of similar claims."); In re US Airways, Inc., 2005 Bankr. WL 3676186, \*8 (E.D. Va. 2005) ("[A]llowance of claims filed many months after the passage of the bar date would frustrate the efforts of both the participants and the court.")

38. Movant's Late Claim Motion should be denied because its allowance would significantly prejudice the Debtors, open the door to a flood of late claims, reduce the

recovery to other creditors, and result in significant investment of time and expense on behalf of this Court, the Debtors and their professionals.

**3. The Length of Delay Weighs Against the Allowance of Movant's Late Claim**

39. Another factor this Court must consider is the length of the delay. The length of Movant's delay in this case is significant and weighs against the Movant. Movant was served with the Bar Date Notice in December 2008, however, she did not file her claim until July 28, 2009. Furthermore, the Late Claim Motion was not filed until November 19, 2009.

40. It is not uncommon for courts to deny a proof of claim filed just a few days after the bar date. See Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530 (4th Cir. 1996) (refusing to enlarge the period for filing a notice of appeal when the litigant mailed the notice three days prior to the expiration of the deadline but the notice did not arrive until three days after the expiration of the deadline); see also In re Dishman, 257 B.R. 780 (Bankr. E.D. Va. 2000) (refusing to enlarge time for filing of complaint where complaint was filed two days late due to a delay in mail delivery caused by inclement weather); see also Avnet,

Inc. v. Maxwell, 2006 WL 1519333 (N.D. Ill.) (refusing to accept late filing where claim was faxed to claims agent on bar date and delivered by courier to claims agent one day after the bar date); see also In re Yankee Distrib. Co., 53 B.R. 222 (Bankr. D. Vt. 1985) (motion to allow late proof of claim was denied where proof of claim arrived one day after the bar date). As a result of Movant's substantial delay in filing her claim and Movant's failure to provide a reasonable justification for such delay, Movant's late claim should be disallowed.

41. Movant has failed to demonstrate sufficient facts to warrant this Court's finding of "excusable neglect." Because Movant had actual and constructive notice of the General Bar Date by December 2008, Movant has failed to provide this Court with any reason why she should be excused from her failure to timely file her claim by the General Bar Date.

42. Movant's failure to file a claim by the General Bar Date was due to inaction, not neglect, and even if Movant's failure to file a claim was due to neglect, such neglect is not excusable. Even if Movant could prove excusable neglect, which the Debtors submit is not possible under the facts Movant alleges, the Court should, in its

discretion deny Movant's Late Claim Motion because, among other reasons, any potential claims held by Movant are barred by the General Bar Date Order. Accordingly, the Late Claim Motion must be denied.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Debtors respectfully request that this Court deny the Late Claim Motion, and grant the Debtors such other and further relief as it deems just and proper.

Dated: March 18, 2010                    Gregg M. Galardi, Esq.  
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Counsel for Debtors in  
Possession

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## **Exhibit A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

In re:

CIRCUIT CITY STORES, INC.,  
et al.,

Debtors.<sup>1</sup>

x  
: Chapter 11  
:  
: Case No. 08-35653 (KRH)  
:  
:  
: Jointly Administered  
:  
:  
x

**AFFIDAVIT OF SERVICE**

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On December 17, 2008, the appropriate number of copies of the following documents were served 1) via hand delivery to the party set forth on the service list attached hereto as **Exhibit A**, for subsequent distribution to beneficial holders of common stock, CUSIP 172737 10 8 (the “common stock”); 2) via overnight mail upon the parties set forth on **Exhibit B**, for subsequent distribution to beneficial holders of common stock; and, 3) via electronic mail upon the parties set forth on **Exhibit C**:

- 1) Notice of Deadline for Filing Proofs of Claim and Proof of Claim form (Docket No. 966)
- 2) Notice of Commencement of Chapter 11 Bankruptcy Cases, Meeting of Creditors and Fixing of Certain Dates (Docket No. 967)

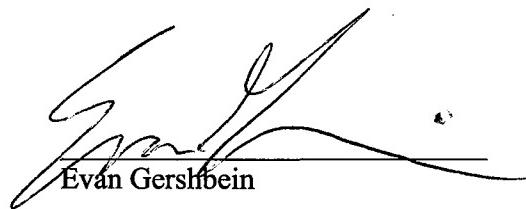
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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

On December 19, 2008, copies of the following documents were served 1) via first class mail upon the registered holders of common stock listed on Exhibit D, provided by Wells Fargo Shareowner Services, as transfer agent; and, 2) via first class mail to the parties set forth on the service list attached hereto as Exhibit E:

- 3) Notice of Deadline for Filing Proofs of Claim and Proof of Claim form (Docket No. 966)
- 4) Notice of Commencement of Chapter 11 Bankruptcy Cases, Meeting of Creditors and Fixing of Certain Dates (Docket No. 967)

Dated: December 24, 2008

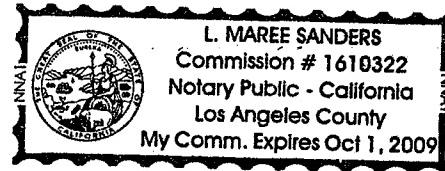


Evan Gershbein

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 24<sup>th</sup> day of December, 2008, by Evan Gershbein, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: 



CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ISA, JOSE LUIS		ADDRESS REDACTED						
ISAAC JR, ANDREW J		ADDRESS REDACTED						
ISAAC, ASHLEY		617 SOUTH 76TH ST			BIRMINGHAM	AL	35206	
ISAAC, ASHLEY		ADDRESS REDACTED						
ISAAC, BRIAN CHRISTOPHE		1809 YELLOWSTONE LANE			EDMOND	OK	73003	
ISAAC, BRIAN CHRISTOPHE		ADDRESS REDACTED						
ISAAC, CHARLESWORTH		1107 CLIFTON ST			WASHINGTON	DC	20009	
ISAAC, DAVINA ALYSE		4005 COLLEGE POINT	7E		FLUSHING	NY	11354	
ISAAC, DISHON STAFFON		1710 OLD ALVIN RD	3203		PEARLAND	TX	77581	
ISAAC, DISHON STAFFON		ADDRESS REDACTED						
ISAAC, DUSTIN LEE		ADDRESS REDACTED						
ISAAC, GREGORY WILLIAM		ADDRESS REDACTED						
ISAAC, JOREL A		ADDRESS REDACTED						
ISAAC, JORELA		15740 SOUTH B ST			TUSTIN	CA	92780-0000	
ISAAC, KAREN		6412 WATCHLIGHT RD			RICHMOND	VA	23234	
ISAAC, MATTHEW TAYLOR		8400 HALLADALE DR			RENO	NV	89506	
ISAAC, MATTHEW TAYLOR		ADDRESS REDACTED						
ISAAC, NATASHA JEWELL		ADDRESS REDACTED						
ISAAC, NATASHYA ANN		ADDRESS REDACTED						
ISAAC, NAVIN		ADDRESS REDACTED						
ISAAC, RAWL H		ADDRESS REDACTED						
ISAAC, RYAN		4600 ELMONT DR	1113		AUSTIN	TX	78741	
ISAAC, SHAMEA DIANTE		1301 E 60TH ST			SAVANNAH	GA	31404	
ISAAC, SHAMEA DIANTE		ADDRESS REDACTED						
ISAAC, TERRY		3824 WERTZ DR			WOODBRIDGE	VA	22193	
ISAAC, TIFFANY		809 E IMPERIA ST			QUEEN CREEK	AZ	85242	
ISAACOFF, BRANT		ADDRESS REDACTED						
ISAACCS, ANTHONY		ADDRESS REDACTED						
ISAACCS, ASHLEY		3209 RADCLIFFE LANE			CHESAPEAKE	VA	23321	
ISAACCS, BRYAN A		ADDRESS REDACTED						
ISAACCS, JOSEPH		7169 THUNDERING HERD PL			DAYTON	OH	45415-1267	
ISAACCS, JOSEPH A		ADDRESS REDACTED						
ISAACCS, LEN		3509 TOLEDO TERR	C		HYATTVILLE	MD	20782-0000	
ISAACCS, LENWORTH NATHANIEL		ADDRESS REDACTED						
ISAACSON, JASON R		543 HOUSTON ST			LEMONT	IL	60439-4016	
ISAACSON, MATTHEW DAVID		ADDRESS REDACTED						
ISAACSON, MICHAEL RICHARD		830 LOCUST ST			ROSELLE PARK	NJ	07204	
ISAACSON, MICHAEL RICHARD		ADDRESS REDACTED						
ISABEL, NICOLE MARIE		ADDRESS REDACTED						
ISABEL, RODRIGUEZ		312 NORWOOD ST			RALEIGH	NC	27601-2743	
ISABELL, AARON DUBOIS		ADDRESS REDACTED						
ISABELL, JENELL VERNEA		ADDRESS REDACTED						
ISABELLA COUNTY TRIAL COURT		300 N MAIN ST			MOUNT PLEASANT	MI	48858	
ISABELLA MEL		3725 BURNING CT			ALPHARETTA	GA	30022	
ISABELLA S ISAAC	ISAAC ISABELLA S	PO BOX 2010			LUSBY	MD	20657-1810	
ISABELLA, THOMAS RICHARD		ADDRESS REDACTED						
ISABELLE, ESTER		123 KRISTIN AVE			SPRING LAKE	NC	28390	
ISABELLE, JEAN E		ADDRESS REDACTED						
ISAC, GAYTAN GALEA		213 EAST DR 213			WINSTON SALEM	NC	27105-4803	
ISACSON, RICHARD MERLE		2540 PENNSYLVANIA AVE			MUSKEGON	MI	49445	
ISACSON, RICHARD MERLE		ADDRESS REDACTED						
ISAGUIRRE, VICENTE		8301 E 104TH WAY			HENDERSON	CO	80640	
ISAHQ, CHRISTOPHER		2054 HERITAGE PARKWAY			NAVARRE	FL	32566	
ISAHQ, CHRISTOPHER AMEIL		ADDRESS REDACTED						
ISAIAS, SALAZAR		11931 VEIRS MILL RD 401			LAUREL	MD	20708-0000	
ISAIAS, MIGDALIA		2428 S LOMBARD APT B			BERWYN	IL	60402-2614	
ISAKHANYAN, ALEKSANDR VLADIMER		3335 HOMESTEAD RD 31			SANTA CLARA	CA	95051	
ISAKHANYAN, ALEKSANDR VLADIMER		ADDRESS REDACTED						
ISARI, ABDUL OMAR		ADDRESS REDACTED						
ISARI, ABDUL SULAIMAN		ADDRESS REDACTED						
ISASIS, JESUS		56 WEST HUNT ST			CENTRAL FALLS	RI	02863	
ISASMENDI, PAUL		ADDRESS REDACTED						
ISAZA, JULIAN ANDRES		ADDRESS REDACTED						
ISAZA, KATHERINE REBECCA		ADDRESS REDACTED						
ISBEL, NICK		666 CHIMNEY HILL CIRCLE			EVANS	GA	30809	
ISBELL CO INC		1302 UNION ST			LAFAYETTE	IN	47904-2058	
ISBELL ENGINEERING GROUP INC		1405 W CHAPMAN DR			SANGER	TX	76266	
ISBELL, CHRISTOPHER RYAN		ADDRESS REDACTED						
ISBERG, TREVOR		2223 MEADOWLARK LANE			PUEBLO	CO	81008	
ISBILL, JOE		ADDRESS REDACTED						
ISBISTER, DEREK LAWRENCE		ADDRESS REDACTED						
ISBISTER, KARI CHRISTINA		1255 ORCUTT RD B 23			SAN LUIS OBISPO	CA	93401	

## **Exhibit B**

**B 10 (Official Form 10) (12/07)**

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA		PROOF OF CLAIM
<b>Debtor against which claim is asserted : (Check only one box below:)</b>		
<input checked="" type="checkbox"/> Circuit City Stores, Inc. (Case No. 08-35653) <input type="checkbox"/> CC Distribution Company of Virginia, Inc. (Case No. 08-35659) <input type="checkbox"/> Circuit City Stores West Coast, Inc. (Case No. 08-35654) <input type="checkbox"/> Circuit City Stores PR, LLC (Case No. 08-35660) <input type="checkbox"/> InterTAN, Inc. (Case No. 08-35655) <input type="checkbox"/> Circuit City Properties, LLC (Case No. 08-35661) <input type="checkbox"/> Ventoux International, Inc. (Case No. 08-35656) <input type="checkbox"/> Orbyx Electronics, LLC (Case No. 08-35662) <input type="checkbox"/> Circuit City Purchasing Company, LLC (Case No. 08-35657) <input type="checkbox"/> Kinzer Technology, LLC (Case No. 08-35663) <input type="checkbox"/> CC Aviation, LLC (Case No. 08-35658) <input type="checkbox"/> Courchevel, LLC (Case No. 08-35664)		
<small>(Note: This form should first be completed and filed by the creditor or attorney for the creditor. If the case is being filed by another party, attach a copy of the case filing notice to this form.)</small>		
<b>Name of Creditor (the person or other entity to whom the debtor owes money or property):</b> <i>Ashley Isaac</i>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
<b>Name and address where notices should be sent:</b> <i>Ashley Isaac 617 South 76th Street Birmingham, AL 35206</i>		<b>Court Claim Number:</b> _____ <i>(If known)</i> <b>Filed on:</b> _____
<b>Name and address where payment should be sent (if different from above):</b>  <i>Telephone number: (205) 836-3075</i>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>850,000</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a).</b> If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtors business, whichever is earlier — 11 U.S.C. § 507(a)(4).
<b>2. Basis for Claim:</b> <u>Lawsuit (no. 2:09-cv-942-</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Contributions to an employee benefit plan — 11 U.S.C. § 507(a)(5).
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____ <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(a)(7).
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b> <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> % <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>If any:</b> \$ _____ <b>Basis for perfection:</b> _____		<input type="checkbox"/> Taxes or penalties owed to governmental units — 11 U.S.C. § 507(a)(8).
<b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <b>Amount entitled to priority:</b> \$ _____
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)		<i>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</i>
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
<b>Date:</b> <input type="text"/> <i>[Signature]</i>		<b>FOR COURT USE ONLY</b> <b>RECEIVED</b> <i>JUL 28 2009</i> <b>KURTZ/MANCARSONCONSULTANTS</b>
<i>Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.</i>		

